**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 567 OF 2006**

The Chief Promoter,
Federation of Co-operative
Housing Societies Usha
Colony Plot Holders Ltd.
and others. ... Petitioner.

V/s.

M/s.Khandelwal Engg.Co.Ltd.
and others. ... Respondents.

C.J.Sawant, senior counsel with A.S.Desai
for the petitioners.

V.A.Thorat, senior counsel with N.N.Bhadrashete
for respondent No.1.

Ms.Mhaispurkar, AGP for respondent Nos.2 to 5.

**CORAM : V.C.DAGA, J.**

**DATED : 16th March 2006.**

**P.C.** :

Rule, returnabnle forthwith by consent of parties. Respondents waives service.

Perused petition.

Heard learned counsel for rival parties.

2. This petition is directed against the order dated 22nd December, 2005 passed by the learned Minister of Co-operation, Mantralaya, Mumbai rejecting revision application filed by the petitioner and thereby confirming the order of the Divisional Joint Registrar, Co-operative Societies, Mumbai dated 6th December, 2005.

**Factural Matrix :**

3. The factual matrix reveals that the appeal filed before the Divisional joint Registrar under section 152 of the Cooperative Societies Act, 1960 ("Act" for short) was accompanied by application for condonation of delay since it was filed beyond period of limitation prescribned under the Act. The said application appears to have moved pursuant to the pleading incorporated in para-21 of the memo of appeal filed by respondent No.1 (appellant therein). It is not in dispute that no orders were passed by the Divisional Joint Registrar on the said application seeking condonation of delay. He proceeded to hear substsntive appeal on merits and cancelled registration of the petitioner vide his order dated 6th October, 2005.

4. Being aggrieved by the aforesaid order of the Divisional Joint Registrar, revision petition under section 154 of the Act was filed before the State Government; wherein various contentions were raised by the petitioners, one of which was that the appeal filed was barred by limitation and that no orders were passed by the Divisional Joint Registrar on the application seeking condonation of delay. The revisional auathority overruled this objection holding that no such objection leading to delayed filing of appeal was raised by the petitioner before the Divisional Joint Registrar.

**Rival Submissions :**

5. Mr.Sawant, learned senior counsel appearing for the petitioner contends that without there being any order on application for condonation of delay in filing appeal, the authority hearing the appeal could not have assumed jurisdiction to entertain and decide appeal on its merits. He further contends that the order of the revisional authority confirming the said order is also bad and illegal. He urged that the qustion leading to delayed filing of appeal was, specifically, raised befoe the appellate authority, still the revisional authority has brushed aside the said contention holding that no such contention was rasied. He pressed into service specific contention raied in the memo of appeal in support of his submission. He, thus, submits that the impugned order suffers

from non-applicationof mind and the same is liable to be set aside.

6. Per contra, Mr.V.A.Thorat, learned senior counsel appearing for respondent No.1 submits that the appeal was well within time, since the appellant, for the first time, acquired knowledge about the order registering the society under the Act on 7th February, 2005, it was not necessary to seek any order on the application for condonation of delay.

7. In rejoinder, Mr.Sawant submits that acquisition of knowledge by respondent No.1, for the first time on 7th February, 2005 was denied by the petitioners. According to them, actual knowledge of the notice was attributed to respondent No.1 on 19th December, 2004 and, therefore, at any rate, it was obligatory on the part of the Divisional Joint Registrar to adjudicate upon the issue as to whether or not the appeal filed before him was barred by limitation.

## **Consideration** :

8. Having heard both parties, It is clear that the Divisional Joint Registrar did not address himself on the question of delay in filing appeal. This aspect has also not been taken into account in its proper perspective by the revisional authority though it was, specifically, argued based on material available on record. During the course of

hearing, both parties agreed that without examining the merits or demerits of the impugned orders and without recording any reasons in support of this order, the impugned orders passed, i.e., the order passed by the revisional authority as well as that of the appellate authority, viz. Divisional Joint Registrar be set aside and the proceeding be remitted back to the Divisional Joint Registrar for consideration afresh keeping all the rival contentions open.

9. Considering consensus between the parties, given by both parties, the impugned order dated 22nd December, 2005 passed by the Hon'ble Minister, Co-operation, Maharashtra State, Mumbai and order dated 6th December, 2005 passed by the Divisional Joint Registrar, Mumbai are set aside by consent of parties without examining merits or demerits thereof. The proceedings are remitted back to the Divisional Joint Registrar, Co-operative Societies, Mumbai for decision afresh in the light of the observations made hereinabove. All rival contentions are kept open.

10. Needless to mention that considering the issues involved, the Divisional Joint Registrar shall hear and dispose of the application for condonation of delay as well as appeal as expeditiously as possible, at any rate, within three months from the date of receipt of copy of this order.

11. Petition is, accordingly, allowed. Rule is made absolute in terms of this order with no order as to costs.

(V.C.DAGA, J.)